

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JASON WHITE,**

**Plaintiff,**

**v.**

**CITY OF ALBUQUERQUE, J. MCRAE,  
J. RICHARDS, AND ROBERT METZGAR,**

**Defendants.**

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**Case No. 12-cv-988 MV-KBM**

**MEMORANDUM AND ORDER GRANTING MOTION FOR LEAVE  
TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS OR FEES**

**REAGAN, Visiting District Judge:**<sup>1</sup>

**THIS MATTER** comes before the Court on Plaintiff's Affidavit Accompanying Motion for Permission to Appeal in forma pauperis filed on March 11, 2015 (Doc. 218) ("Motion for Leave to Appeal IFP"), and on Plaintiff's Motion to Proceed In Forma Pauperis and for Payment of Transcripts at Government Expense filed on March 24, 2105 (Doc. 224) ("Amended Motion for Leave to Appeal IFP"). For the reasons stated below, the Court will **GRANT** Plaintiff's Motion and Amended Motion for Leave to Appeal IFP.

"In order to succeed on [a motion for leave to proceed on appeal without prepayment of costs or fees], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "The Supreme Court has held that good faith is to be judged by

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<sup>1</sup> The undersigned District Judge, Chief Judge of the United States District Court for the Southern District of Illinois, is presiding over this case by designation of Chief Justice John Roberts of the Supreme Court of the United States.

an objective standard, for review of any issue ‘not frivolous.’” *Spearman v. Collins*, 500 Fed.Appx. 742, 743 (10th Cir. 2012) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962). “An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” *Id.*; see also *Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (“an appeal is frivolous if it lacks an arguable basis in either law or fact”).

Plaintiff has satisfied the first requirement to succeed on a motion for leave to proceed *in forma pauperis* on appeal because he has shown that he is financially unable to pay the required filing fees. He is unemployed, has no income, and lives with his parent.

Plaintiff has also satisfied the second requirement to succeed on a motion for leave to proceed *in forma pauperis* on appeal because he has identified “the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardleben*, 937 F.2d at 505. Plaintiff contends the Court erred in applying the *Ehrenhaus* criteria when it dismissed this case with prejudice. See *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992) (the court should ordinarily evaluate the *Ehrenhaus* factors on the record); *Florence v. Decker*, 153 Fed.Appx. 478, 480 (10th Cir. 2005) (“When a dismissal is with prejudice it should be determined by reference to the *Ehrenhaus* criteria”).

Plaintiff also moves the Court for a transcript of the trial at government expense. “Transcript fees for persons appealing IFP will be paid for by the United States ‘if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial questions).’” *Patel v. Wooten*, 264 Fed.Appx. 755, 758 (10th Cir. 2008) (quoting 28 U.S.C. § 753(f)). “In order to be eligible for a free transcript, [Plaintiff] must demonstrate that his suit is not frivolous and that a transcript is needed in order to resolve the issues on appeal.” *Patel*, 264 Fed.Appx. at 758 (citing *Sistrunk v. United States*, 992 F.2d 258, 259 (10th Cir. 1993)). Because the Court

dismissed the case against Defendants pursuant to *Ehrenhaus* during the trial, a transcript of the trial is need to determine whether the Court acted within its discretion in dismissing the case.

The Court **GRANTS** Plaintiff's Motion for Leave to Appeal IFP (Doc. 218, filed March 11, 2015) and Amended Motion for Leave to Appeal IFP (Doc. 224, filed March 24, 2015), including Plaintiff's request for a transcript of the trial at government expense.

**IT IS SO ORDERED.**

**DATED:     March 30, 2015**

*s/ Michael J. Reagan*  
**MICHAEL J. REAGAN**  
United States District Judge